



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
www.idem.IN.gov

July 8, 2010

Ms. Cheryl Newton
Division Director
Office of Air and Radiation
U.S. EPA, Region V- (A-18J)
77 West Jackson Blvd.
Chicago, IL 60604

Dear Ms. Newton:

Indiana Department of Environmental Management (IDEM) was grateful to have had the opportunity recently to discuss a difficult interpretational issue that has arisen with the use of the New Source Review ("NSR") reform rules with staff and management from the U. S. EPA's Region 5 offices. In response to those discussions, IDEM is submitting this letter to request written guidance on this issue, along with clarification of the legal basis for the EPA's position and identification of any prior guidance and/or policy related to this issue. While we appreciate the time and effort that staff at Region 5, as well as OAQPS and OECA, have already expended on this matter, we believe that Indiana, and many other States, would benefit from written guidance on this very important and likely controversial interpretation of the NSR regulations.

As we discussed, the issue relates to the use of the Actual to Projected Actual ("ATPA") test for evaluating a project at a major source to determine if there is significant emissions increase. More specifically, how does the EPA expect the permitting authority to account for projects implemented during the contemporaneous period of a new project when the prior projects utilized ATPA rather than taking a synthetic minor limit or conducting a traditional contemporaneous netting evaluation? Historically, past projects which were implemented at a source would have either taken a synthetic minor limit to ensure the project remained minor or been evaluated through netting, which would have established limits to preserve the minor status of that project. When a project is evaluated using ATPA, the source projects the associated increases from the project for modified and affected units, and is required to maintain records which will demonstrate that the project was in fact minor after the prescribed period (5 or 10 years based on the type of project).

IDEM is asking for the EPA to clearly delineate its position as it relates to projects, which are under review using traditional netting when there is a project within the previous five year contemporaneous period that was evaluated using ATPA. More specifically, what obligations do the permitting authorities have regarding those past projects relative to evaluating actual emission increases, the establishment of limitations, and/or the inclusion of these projects in the current netting analysis. In addition, as noted above, IDEM is requesting that the EPA not only provide guidance on this point, but identify the legal authority for its position, as well as any prior guidance or policy documents that have been published or issued that may have already established its interpretation of the underlying regulations.

We would be willing to discuss this matter further with you or your staff to ensure that IDEM's request is clear and to ensure that there is no confusion as to what the issues are and what IDEM is seeking in response. Questions related to this matter can be directed to Matt Stuckey, Air Permits Branch Chief, at mstuckey@idem.in.gov or by calling (317) 233-0203.

Thank you in advance for your prompt and thorough response to this request. As we discussed before, the EPA's interpretation of this regulatory process is likely to be controversial and create additional litigation for State regulatory agencies. Therefore, clear and specific guidance will assist those agencies with this litigation and ensure that sources have an adequate understanding as to the EPA's position and the basis for the position of the permitting authority.

Sincerely,

A handwritten signature in cursive script that reads "Keith Baugues".

Keith Baugues
Assistant Commissioner
Office of Air Quality

MS/KB/ams

cc: Anna Marie Woods